APPENDIX.

COURT OF APPEALS, SECOND APPELLATE DISTRICT OF OHIO.

GREENE COUNTY, No. 266.

M. J. DUGAN, *Plaintiff in Error,*

vs.

THE STATE OF OHIO, *Defendant in Error.*

Decision.

Rendered on Tuesday, the 5th day of April, 1927.

ALLREAD, *J.:*

Dugan was prosecuted before the Mayor of the City of Xenia for illegal possession of intoxicating liquors, was convicted and sentenced to pay a fine of $500 and costs. The prosecution was in the name of the State. The conviction and sentence were affirmed by the court of common pleas, and error is prosecuted to this Court.

The affidavit, as well as the evidence, shows that the offense was committed within the limits of the city.

A general objection to the jurisdiction of the Mayor was made by counsel for the accused at the beginning of the trial, and also at the close of the evidence. These objections were overruled. In this Court the argument of counsel for plaintiff in error for a reversal of the judgments is based upon the decision of the Supreme Court of the United States in the case of Tumey *vs.* the State of Ohio, announced by Chief Justice Taft.

It is conceded that the Mayor of the City of Xenia is compensated by a fixed salary, and is not entitled to any fees in criminal cases. The Mayor's Court is not, therefore, a so-called commercialized court. He is not in any sense personally interested. His attitude is exactly the same as that of municipal court judges operating under fixed salaries. The jurisdiction of the Mayor in the case at bar does not rest upon the Crabbe Act as in the North College Hill case. In the instant case the Mayor of the City of Zenia and the predecessors in office, so far as the record shows, have exercised county-wide jurisdiction in misdemeanor cases since the Municipal Code Act of 1869. Counsel for plaintiff in error relies upon the fact that the fine and costs, assessed and collected by the Mayor, are paid in part to the City of Xenia, and the amount so paid is used for city purposes. Counsel relies upon the comments made by Chief Justice Taft in the Tumey case, that the fines collected by the Mayor of the Village of North College Hill were paid to the village. This reference, however, was in our judgment incidental, and did not of itself amount to a disqualification of the Mayor, but was a circumstance which accentuated the personal interest of the Mayor under the scheme provided by the so-called Crabbe Act. To hold that the Mayor of a city is disqualified merely because fines are paid into the city treasury would break down the legitimate functions of the non-commercialized courts of the State. To so construe the decision of Judge Taft would affect the jurisdiction not only of Mayors operating upon a fixed salary, but Municipal Court judges, and might even extend to Common Pleas and Probate judges where the fines are paid into the county treasury. We are clear that this interpetation is not justified by the decision of the Supreme Court of the United States in the Tumey case.

Under the conceded facts in the instant case, we are of opinion that the Mayor of the City of Xenia was not disqualified to sit in judgment in the case, and that the judgment of conviction is valid.

Finding no prejudicial error, the judgment of the courts below are, therefore, affirmed.

(Ferneding and Kunkle, JJ., concur.)

FRANK L. JOHNSON,
Attorney for Planitiff in Error.
J. A. FINNEY,
Attorney for Defendant in Error.